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EXAMINER	
HUERTA, ALEXANDER Q	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/643,111	PATEL ET AL.	
	Examiner	Art Unit	
	Alexander Q. Huerta	2427	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 February 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-73* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-73* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 4, 2009 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-73 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claims 67, 71, 73 are recites the limitation “the second appliance”. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, “the second appliance” will be interpreted as “the second application.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-16, 18-29, 31-34, 37-60, 64-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (US Pub. **2007/0199030**), in view of Plourde, Jr. (US Pat. **7,380,029**), herein after referenced as Ellis and Plourde, respectively.

Regarding **claim 1**, Ellis discloses an "apparatus for receiving programming content" (Fig. 2a El. 22). The apparatus (22) comprising:

“a memory for providing a first application and a second application ([0114], Fig. 9 El. 63)…, the first application being used to realize at least a first programming service for providing first programming content in accordance with a broadcast schedule ([0060], [0098], i.e. normal television viewing), the second application being used to realize at least a second programming service for providing second programming content after broadcast thereof, the second programming content being recorded during the broadcast thereof at a location remote from the apparatus (remote media servers)” ([0075], [0133], [0145], Figs. 18a-d, i.e. Ellis teaches that users may record programs during the broadcast thereof at a remote media server and can access recorded programs through a program menu listing), and

“a device (Fig. 7 El. 28) for receiving information concerning a change from a first program source afforded the first programming service to a second program source afforded the second programming service ([0098], [0124], [0125], i.e. the user accesses the program guide to either view broadcasted programming or view recorded programs. The selected service becomes active depending on which service the user chooses), the second application being activated in response to the change and becoming

receptive to a request for obtaining a selected portion of the second programming content" ([0180], Fig. 25b, i.e. the user can play a specific program segment).

Ellis fails to explicitly disclose that "the first and second software applications being separately registered in a registry of applications in the apparatus."

Plourde discloses that "the first (WatchTV 362) and second (PVR 377) software applications being separately registered in a registry of applications in the apparatus." (Col. 15 lines 29-35, Fig. 3A, i.e. the WatchTV application 362 and the PVR application 377 are separately registered in a registry of applications). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of separately registering the WatchTV and PVR applications in a registry of applications as taught by Plourde, to improve the remote recording system of Ellis for the predictable result of enabling the processing unit to easily distinguish and execute the various stored applications.

Regarding **claim 4**, Ellis discloses "the first application is suspended when the second application is activated" ([0098], [0157], i.e. Ellis discloses suspending the first application when the second application is activated as evidenced by the fact that a user that the user can view normal broadcast television or playback recorded programming. The normal television viewing would therefore be suspended so that the viewing of the recorded programming could commence).

Regarding **claim 5**, Ellis discloses that "the second program source is accessed in accordance with the second application" ([0125], [0126]).

Regarding **claim 6**, Ellis discloses "a service request is generated based on the information, the service request including an identifier of the second program source" [0157].

Regarding **claim 7**, Ellis discloses that "the second application monitors for the identifier in the service request" ([0156], i.e. the remote media server 24 responds to playback requests).

Regarding **claim 8**, Ellis discloses that "the second application self-activates when the identifier is detected" ([0157], i.e. the remote media server retrieves the recorded program upon receiving the request and transmits the program to the user for subsequent display).

Regarding **claim 9**, Ellis discloses that "the second application causes the first application to be suspended" ([0098], [0157], i.e. Ellis discloses suspending the first application when the second application is activated as evidenced by the fact that a user that the user can view normal broadcast television or playback recorded programming. The normal television viewing would therefore be suspended so that the viewing of the recorded programming could commence).

Regarding **claim 10**, Ellis discloses that "the second program source is accessed in accordance with the first application before the first application is suspended" ([0124], [0125], [0157], i.e. both normal television view and recorded programs are accessed via the program guide).

Regarding **claim 11**, Ellis discloses that "the second application is also used to realize a manipulation of a presentation of the second programming content" [0164].

Regarding **claim 12**, Ellis discloses that “the manipulation includes a selected one of rewinding, pausing, and fast-forwarding" [0164].

Regarding **claim 13**, Ellis discloses that "the second application provides a user interface for selecting the selected portion of the second programming content" ([0125], [0126]).

Regarding **claim 14**, Ellis discloses that "the selected portion was broadcast within a predetermined period in the past" [0125].

Regarding **claim 15**, Ellis discloses that “in response to the request, the selected portion is obtained from the remote location through a communications network” [0157].

Regarding **claim 16**, Ellis discloses that "the communication network includes a broadband network” [0065].

Regarding **claim 18**, Ellis discloses “a set-top terminal” [Fig. 7 El. 28].

Regarding **claim 19**, Ellis discloses “a memory for providing first and second applications ([0114], Fig. 9 El. 63)…, the first application being used to realize at least a first programming service for providing first programming content in accordance with a broadcast schedule [0060], the second application being used to realize at least a second programming service for providing second programming content after broadcast thereof, the second programming content being recorded during the broadcast thereof at a location remote from the apparatus,” ([0075], [0133], [0145], Figs. 18a-d, i.e. Ellis teaches that users may record programs during the broadcast thereof at a remote media server and can access recorded programs through a program menu listing),

“storage for storing selected programming content” [Fig. 2a El. 15];

"a server for presenting the stored programming content in accordance with the first application" [Fig. 2a El. 24]; and

"a device [Fig. 7 El. 28] for receiving information concerning a change from a first program source afforded the first programming service to a second program source afforded the second programming service ([0098], [0124], [0125], i.e. the user accesses the program guide to either view broadcasted programming or view recorded programs. The selected service becomes active depending on which service the user chooses), in response to the change the second application becoming receptive to a request for obtaining a selected portion of the second programming content" ([0180], Fig. 25b, i.e. the user can play a specific program segment).

Ellis fails to explicitly disclose that "the first and second software applications being separately registered in a registry of applications in the apparatus."

Plourde discloses that "the first (WatchTV 362) and second (PVR 377) software applications being separately registered in a registry of applications in the apparatus." (Col. 15 lines 29-35, Fig. 3A, i.e. the WatchTV application 362 and the PVR application 377 are separately registered in a registry of applications). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of separately registering the WatchTV and PVR applications in a registry of applications as taught by Plourde, to improve the remote recording system of Ellis for the predictable result of enabling the processing unit to easily distinguish and execute the various stored applications.

Regarding **claim 20**, Ellis discloses that “in response to the change, the second program source is accessed in accordance with the first application" ([0125]. [0126], i.e. both recorded and broadcasted programs are accessed through the program guide).

Regarding **claim 21**, Ellis discloses that “the storage stores the selected programming content during broadcast thereof [0125], and at least before the request is received, the server manipulates a presentation of the stored programming content in accordance with the first application in response to a signal indicating a desired manipulation of a presentation of material from the second program source" (Fig. 25b, i.e. the user can rewind a program before playing a specific portion of the program).

Regarding **claim 22**, Ellis discloses that "the manipulation includes a selected one of rewinding, pausing and fast-forwarding" [0164].

Regarding **claim 23**, Ellis discloses that “after the request is received, a manipulation of a presentation of the selected portion of the second programming content is performed in accordance with the second application" ([0163], [0164]).

Regarding **claim 24**, Ellis discloses that “the manipulation includes a selected one of rewinding, pausing and fast-forwarding” [0164].

Regarding **claim 25**, Ellis discloses that “after the request is received, the selected portion of the second programming content is obtained from the remote location and buffered in the storage (31), the server presenting the buffered content in accordance with the first application" ([0096], [0102], [0157], i.e. the media server 25 may prefetch and pre-decode a suitable of data so that the video stream provided to the user is uninterrupted).

Regarding **claim 26**, Ellis discloses that "the server manipulates a presentation of the buffered content in accordance with the first application in response to a signal indicating a desired manipulation of a presentation of the selected portion of the second programming content" ([0096], [0164], [0165], [0180], i.e. the presentation changes when the user, for example, rewinds or fast-forwards the program).

Regarding **claim 27**, Ellis discloses that "the manipulation includes a selected one of rewinding, pausing and fast-forwarding" [0164].

Regarding **claim 28**, Ellis discloses that "the selected portion is obtained from the remote location through a communications network" [0157].

Regarding **claim 29**, Ellis discloses that "the communications network includes a broadband network" [0065].

Regarding **claim 31**, Ellis discloses that "the second application provides a user interface for selecting the selected portion of the second programming content" ([0125], [0126]).

Regarding **claim 32**, Ellis discloses that "the selected portion was broadcast within a predetermined period in the past" [0125].

Regarding **claim 33**, Ellis discloses "a set-top terminal" [Fig. 7 El. 28].

Regarding **claims 34, 37-48**, claims 34, 37-48 are interpreted and thus rejected for the reasons set forth above in the rejections of claims 1, 4-15, respectively. Claims 1, 4-15 describe an apparatus for receiving programming content and claims 34, 37-48 describe a method for use in an apparatus for receiving programming content. Thus claims 34, 37-48 are rejected.

Regarding **claim 49**, claim 49 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 1. Claim 1 describes an apparatus for receiving programming content and claim 49 describes a method for use in an apparatus for receiving programming content. Thus claim 49 is rejected.

Regarding **claims 50-60**, claims 50-60 are interpreted and thus rejected for the reasons set forth above in the rejection of claims 20-28, 31-32, respectively. Claims 20-28, 31-32 describe an apparatus for receiving programming content and claims 50-60 describe a method for use in an apparatus for receiving programming content. Thus claims 50-60 are rejected.

Regarding **claim 64**, Ellis discloses that "the second service comprises: requesting second programming content that has been broadcasted within a predetermined period from the remote location ([0169], i.e. programs stored in the remote media server that are not accessed in a period of time will be deleted), in response to a request from a user; enabling the user to view the requested second programming content ([0074], [0170]); and enabling the user to manipulate the display of the second programming content" [0111].

Regarding **claim 65**, Ellis discloses that "the memory ([0114], Fig. 9 El. 63) further provides a third application being used to record selected programming content during the broadcast thereof in a second memory (optical digital storage device 31) located in the apparatus and providing the recorded selected programming content after broadcast thereof ([0101], [0102], [0133], i.e. the user may store recorded programs locally) wherein:

"if a request to view second programming content that has been broadcast within the predetermined period is received from a user: the second application suspends the third application and provides the second service" ([0114], [0169], i.e. recorded programs stored in the remote media server not accessed within a period of time are deleted, providing viewers a window of time to view the program. Thus, if a viewer requests the program during the window of time, the program can be retrieved from the remote media server eliminating the need to retrieve the program stored locally); and

"if a request to view selected programming content that has not been broadcast within the predetermined period is received from a user: the third application retrieves the selected programming content from the second memory, provides the selected programming content ([0101], [0102], i.e. if the program is deleted from the remote media server, the user can playback recorded programs stored locally, where there are no time constraints when to view recorded programs), and enables the user to manipulate the display of the selected programming content" [0111].

Regarding **claim 66**, Ellis discloses that "the first programming content (normal TV viewing) provided in accordance with the first programming service is not manipulable; and the second programming content (NPVR) provided in accordance with the second programming service is manipulable." ([0075], [0098], [0162]-[0164], i.e. during normal television viewing, the viewer is unable to use trick play functions. However, once a program has been recorded by the remote media servers, then the viewer is permitted to use trick play functions).

Regarding **claim 67**, Ellis discloses that "only the second [application] causes manipulation of the second programming content." ([0162]-[0164]).

Regarding **claim 68**, Ellis fails to explicitly disclose that "the registry is in the memory."

Plourde discloses that "the registry is in the memory." (Col. 15 lines 29-35, Fig. 3A, i.e. applications are stored in flash memory and DRAM). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of storing the registry in memory as taught by Plourde, to improve the remote recording system of Ellis for the predictable result of enabling the processing unit to easily distinguish and execute the various stored applications.

Regarding **claim 69**, Ellis fails to explicitly disclose that "the registry is in the memory."

Plourde discloses that "the registry is in the memory." (Col. 15 lines 29-35, Fig. 3A, i.e. applications are stored in flash memory and DRAM). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of storing the registry in memory as taught by Plourde, to improve the remote recording system of Ellis for the predictable result of enabling the processing unit to easily distinguish and execute the various stored applications.

Regarding **claim 70**, Ellis discloses that "the first programming content (normal TV viewing) provided in accordance with the first programming service is not manipulable; and the second programming content (NPVR) provided in accordance with the second programming service is manipulable." ([0075], [0098], [0162]-[0164], i.e.

during normal television viewing, the viewer is unable to use trick play functions. However, once a program has been recorded by the remote media servers, then the viewer is permitted to use trick play functions).

Regarding **claim 71**, Ellis discloses that "only the second [application] causes manipulation of the second programming content." ([0162]-[0164]).

Regarding **claim 72**, Ellis discloses that "none of the first programming content (normal TV viewing) is manipulable, and all of the second programming content (NPVR) is manipulable." ([0075], [0098], [0162]-[0164], i.e. during normal television viewing, the viewer is unable to use trick play functions. However, once a program has been recorded by the remote media servers, then the viewer is permitted to use trick play functions)

Regarding **claim 73**, Ellis discloses that "only the second [application] causes manipulation of the second programming content." ([0162]-[0164]).

Claims 2-3, 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Plourde, and in further view of Goode (US Pub. **2004/0226044**), herein after referenced as Goode.

Regarding **claim 2**, the combination of Ellis and Plourde fail to explicitly disclose that "one or more tables are stored, which associate the second program source with the second application".

Goode discloses that "one or more tables are stored, which associate the second program source with the second application" ([0023], [0026], [0047], Figs. 1, 7, i.e. a

channel map is provided that distinguishes between broadcast channels and on-demand channels). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of including one or more tables to associate the second program source with the second application as taught by Goode, to improve the remote recording system of Ellis for the predictable result of separating on-demand channels from broadcast channels so that content providers can concurrently offer both services to the viewer.

Regarding **claim 3**, the combination of Ellis and Plourde fail to explicitly disclose that "the one or more tables include a service table."

Goode discloses that "the one or more tables include a service table." ([0023], [0026], [0047], Figs. 1, 7). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of including a service table as taught by Goode, to improve the remote recording system of Ellis for the predictable result of separating on-demand channels from broadcast channels so that content providers can concurrently offer both services to the viewer.

Regarding **claim 35**, claim 35 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 2.

Regarding **claim 36**, claim 36 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 3.

Claims 17, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Plourde, and in further view of Plotnick et al. (US Pub. **2002/0178447**), herein after referenced as Plotnick.

Regarding **Claim 17**, the combination of Ellis and Plourde fail to disclose that "the broadband network includes a hybrid fiber coaxial (HFC) cable network".

Plotnick discloses "the broadband network includes a hybrid fiber coaxial (HFC) cable network" [0073]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ellis by specifically providing the broadband network includes a hybrid fiber coaxial (HFC) cable network, as taught by Plotnick, so that fiber optic cable can be brought closer to the customer which provides them with a high bandwidth low noise medium.

Regarding **claim 30**, claim 30 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 17. Claim 17 describes an apparatus for receiving programming content and claim 30 also discloses an apparatus for receiving programming content. Thus claim 30 is rejected.

Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Plourde, and in further view of Ellis (US Pub. **2004/0226042**), herein after referenced as Ellis'042.

Regarding **claim 61**, the combination of Ellis and Plourde fail to explicitly disclose that "the first programming content is provided via one or more first channels;

and the second programming content is provided via one or more second channels different from the one or more first channels".

Ellis'042 discloses "the first programming content is provided via one or more first channels; and the second programming content is provided via one or more second channels different from the one or more first channels" ([0055], i.e. Ellis'042 teaches of dedicated channels for TV viewing along with dedicated on-demand playback channels). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of providing separate channels for regular broadcast television and on-demand television as taught by Ellis'042, to improve the remote recording system of Ellis for the predictable result of adjusting channel bandwidth according to the user's request, thereby providing a more flexible system for bandwidth management.

Regarding **claim 62**, the combination of Ellis and Plourde fail to explicitly disclose that "the second programming service is available only with respect to programming content associated with the one or more second channels".

Ellis'042 discloses "the second programming service is available only with respect to programming content associated with the one or more second channels" ([0055], i.e. on-demand programming is available on the on-demand channel). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of providing the second programming service only with respect with the one or more second channels as taught by Ellis'042, to improve the remote recording system of Ellis for the predictable result of separating on-demand channels from broadcast channels so that content providers can concurrently offer both services to the viewer.

Regarding **claim 63**, the combination of Ellis and Plourde fail to explicitly disclose that “the change includes switching from one of the one or more first channels to one of the one or more second channels".

Ellis’042 discloses that “the change includes switching from one of the one or more first channels to one of the one or more second channels" ([0055], viewer can switch from watching broadcast television to on-demand). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of switching from one the first channels to one of the second channels as taught by Ellis’042, to improve the remote recording system of Ellis for the predictable result of separating on-demand channels from broadcast channels so that content providers can concurrently offer both services to the viewer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Q. Huerta whose telephone number is (571) 270-3582. The examiner can normally be reached on M-F(Alternate Fridays Off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Q Huerta
Examiner
Art Unit 2427

April 14, 2009

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427